

Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

November 30, 1998

Dear Ms. Xxxxx:

This letter is in response to your letters dated March 13, 1998 and May 10, 1998. We regret the delay in our response. The nature of your letter and the information you have provided require that we respond with a General Information Letter which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 86 Ill. Adm. Code 1200.120(b) and (c), enclosed.

You requested that the Department respond to your May 10, 1998 letter instead of your March 13, 1998 letter. In your May 10, 1998 letter, you have stated and made inquiry as follows:

This letter is in reference to our letter sent March 13, 1998. The facts represented in that letter have changed somewhat significantly. As a result, we respectfully request that you consider the facts and issues identified below in replacement of the facts presented in the original letter. The most significant factual changes are: 1) XYZ will not purchase the fleet customers' original inventory of tires; 2) XYZ will purchase and resell all new tires and parts to fleet customers rather than retain ownership to the tires as represented in the original facts scenario.

Our client, XYZ is forming a new business unit to provide tire management services for trucking company fleets. We request guidance on how to apply the sales and use tax laws of your state to this new venture.

Facts

The tire management system is a comprehensive program in which XYZ will administer all functions related to tires for the fleets. Once XYZ has entered into a contract with a fleet, XYZ will coordinate all services related to the maintenance and management of the existing tire inventory of its fleet customer. XYZ will also provide new tires and related maintenance and management services with respect to those tires as needed. . The majority of the goods and services comprising the tire management system are provided by a network of independent franchise dealers affiliated with XYZ ('Suppliers'), although some services are performed by XYZ employees or union employees of the fleet customer. A list of services provided is outlined below:

1. Purchase and transfer of new tires
2. Purchase and transfer of casings, rims and other ancillary repair items;
3. Retreading of tires which may include some repair service;
4. Pick-up and delivery of tires to terminals, relay stations, garages, etc.
5. Management of inventory levels at fleet locations;
6. Tire repairs and wheel reconditioning labor;
7. Preventative maintenance (e.g., damage inspection, tread depth measurement, and tire pressure inspection
8. Tire mounting and dismounting;
9. Processing of warranty claims for new tires and retreads;
10. Disposal of scrap tires;
11. Emergency roadside service; and
12. Fleet tire performance and reporting analysis.

Under the tire management system, the Suppliers are reimbursed by XYZ for all goods and services provided. XYZ estimates that materials costs to perform the contract will constitute more than fifty percent of all costs to perform the contract. As stated above, XYZ charges a monthly fee to the customer for the management of the fleet's tires including the transfer of all tires and other repair materials. The fee is computed at a flat rate per mile and one centralized invoice is issued to the customer. A credit memo is issued by XYZ for any services provided by the union employees of the fleet customer. Union employees of the fleet customers will be performing certain mount and dismount services as required by the union contracts. XYZ will adjust the monthly fee by the charge for the services performed by the union employees.

The fleet customer most likely will be operating its fleet on a multistate basis. XYZ will know in which states the tires are placed into service and where the services will be performed, but will not know in which states the tires are being used. However, as stated above, the fleet customer will be charged a monthly fee based on miles which will necessarily cover services performed in many states. Additionally, XYZ's fleet customers may have exemptions with respect to the purchase of trucks and repair parts for trucks in certain states (e.g. interstate carrier exemptions, carrier for hire exemptions, etc.).

Issues

With respect to the performance of this tire management contract, please provide us with a response to each of the issues identified below:

1. Please indicate the taxability of each of the following items:
 - a) Purchase and transfer of new tires
 - b) Purchase and transfer of casings, rims and other ancillary repair items;
 - c) Retreading of tires which may include some repair service;
 - d) Pick-up and delivery of tires to terminals, relay stations, garages, etc.

- e) Management of inventory levels at fleet locations;
 - f) Tire repairs and wheel reconditioning labor;
 - g) Preventative maintenance (e.g., damage inspection, tread depth measurement, and tire pressure inspection
 - h) Tire mounting and dismounting;
 - i) Processing of warranty claims for new tires and retreads;
 - j) Disposal of scrap tires;
 - k) Emergency roadside service; and
 - l) Fleet tire performance and reporting analysis.
2. If the monthly fee is billed as a lump-sum charge, will the fee be subject to sales or use tax?
- a) If a portion of the lump-sum fee relates to non-taxable services can we deduct the amount allocable to such services from the taxable base without separately stating the non-taxable portion on the invoice.
 - b) If all or a portion of the fee is taxable, will any of the trucking company's exemptions (e.g. interstate carrier, etc.) exempt the sale to the fleet customer? If so, what documentation is necessary to support the exemption?
 - c) If all or a portion of the fee is taxable, can we reduce the taxable base by adjustments to the bill for services provided by union employees of the fleet customer?
3. If the billing allocates the monthly fee among materials, taxable services and non-taxable services, is the amount allocated to non-taxable services exempt from sales tax?
- a) If a portion of the lump-sum fee relates to non-taxable services can we deduct the amount allocable to such services from the taxable base without separately stating the non-taxable portion on the invoice.
 - b) If all or a portion of the fee is taxable, will any of the trucking company's exemptions (e.g. interstate carrier, etc.) exempt the sale to the fleet customer? If so, what documentation is necessary to support the exemption?
 - c) If all or a portion of the fee is taxable, can we reduce the taxable base by adjustments to the bill for services provided by union employees of the fleet customer?
4. If the monthly fee is subject to sales tax, can XYZ purchase services and goods which will be utilized by its fleet customers pursuant to the management agreement exempt as a sale for resale or under any other exemption?

We respectfully request your response as soon as possible. A return envelope is enclosed. If you have additional questions, please contact me at ####. Thank you in advance for your assistance.

The Department is unable to determine the exact nature of the transactions described in your letter. Without more information we are unable to determine what information may be useful to you. The following general information may pertain to the topics set forth in your letter.

Retailers' Occupation Tax and Use Tax do not apply to receipts from sales of personal services. Under the Service Occupation Tax Act, servicemen are taxed on tangible personal property transferred incident to sales of service. For your general information we are enclosing a copy of 86 Ill. Adm. Code 140.101 regarding sales of service and Service Occupation Tax.

The purchase of tangible personal property that is transferred to service customers may result in either Service Occupation Tax liability or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. Servicemen may calculate their tax base in one of four ways: (1) separately stated selling price; (2) 50% of the entire bill; (3) Service Occupation Tax on cost price if they are registered de minimis servicemen; or, (4) Use Tax on cost price if the servicemen are de minimis and are not otherwise required to be registered under the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of sales of service. The tax is based on the separately stated selling price of the tangible personal property transferred. If servicemen do not wish to separately state the selling price of the tangible personal property transferred, those servicemen must use 50% of the entire bill to their service customers as the tax base. Both of the above methods provide that in no event may the tax base be less than the cost price of the tangible personal property transferred. Under these methods, servicemen may provide their suppliers with Certificates of Resale when purchasing the tangible personal property to be transferred as a part of the sales of service.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). See, 86 Ill. Adm. Code 140.101(f) enclosed. This class of registered de minimis servicemen is authorized to pay Service Occupation Tax (which includes local taxes) based upon the cost price of tangible personal property transferred incident to sales of service. They remit the tax to the Department by filing returns and do not pay tax to suppliers. They provide suppliers with Certificates of Resale for the property transferred to service customers.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under the Retailers' Occupation Tax Act. Servicemen may qualify as de minimis if they determine that their annual aggregate cost price of tangible personal property transferred incident to sales of service is less than 35% of their annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphic arts production). Such de minimis servicemen may pay Use Tax to their suppliers or may self-assess and remit Use Tax to the Department when making purchases from unregistered out-of-State suppliers. Those servicemen are not

authorized to collect "tax" from their service customers, nor are they liable for Service Occupation Tax. It should be noted that servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis.

The taxability of maintenance agreements is dependent upon whether the charge for the agreement is included in the selling price of tangible personal property. If the charge for a maintenance agreement is included in the selling price of tangible personal property, that charge is part of the gross receipts of the retail transaction and is subject to Retailers' Occupation Tax liability. No tax is incurred on the maintenance services or parts when the repair or servicing is completed.

If maintenance agreements are sold separately from tangible personal property, the sale of the agreement is not a taxable transaction. However, when maintenance services or parts are provided under the maintenance agreement, the company providing the maintenance or repair will be acting as a service provider under the Service Occupation Tax Act. The Service Occupation Tax Act provides that when a service provider enters into an agreement to provide maintenance services for a particular piece of equipment for a stated period of time at a predetermined fee, the service provider incurs Use Tax based upon its cost price of tangible personal property transferred to the customer incident to the completion of the maintenance service. See 86 Ill. Adm. Code 140.301(b)(3), enclosed. This is because the service provider, in these instances, is the user of the tangible personal property, not because he has elected to be de minimis.

The Retailers' Occupation Tax Act provides an exemption for tangible personal property sold to interstate carriers for hire for use as rolling stock moving in interstate commerce or to lessors of such interstate carriers. See 35 ILCS 120/2-5(12) and (13) (1996 State Bar Edition). The Use Tax Act provides for the same exemption. See 35 ILCS 105/3-55 (1996 State Bar Edition). The exemption is described in the enclosed copy of 86 Ill. Adm. Code 130.340. The carrier must move in interstate commerce on a regular and frequent basis in order to qualify for the exemption.

When making a purchase of qualifying property, the purchasers must provide the sellers with a certification that they are interstate carriers for hire and that they are purchasing the property for use as rolling stock moving in interstate commerce. If the purchasers are lessors, the purchasers must give the sellers a certification to that effect identifying the lessee interstate carriers for hire. Form RUT-7, Rolling Stock Certification, which is signed by the purchasers, is used to provide the required certification in order to execute the statutory exemption.

Also for your information, we have enclosed a copy of FY Bulletin 93-24 with regard to the Tire User Fee. The Tire User Fee, 415 ILCS 5/55.8, became effective July, 1992. This law requires retailers to collect a fee of one dollar per tire sold and delivered in this State. The revenues generated by this fee are deposited into the Used Tire Management Fund, the monies of which are generally used to remove and dispose of accumulations of hazardous waste tires, and for inspection, enforcement and research activities. The Tire User Fee is not included in the gross receipts subject to Retailers' Occupation Tax.

Please note that certain tires are excluded from imposition of the fee. As of January 1, 1993, retread or "reprocessed" tires are no longer subject to the fee. A "reprocessed tire" is defined as a used tire that has been recapped,

retreaded, or regrooved. See the enclosed copy of Informational Bulletin 93-24. Generally, tires that are to be used on vehicles that are not transported or drawn upon the highway are not subject to the fee. Please note that tires for aircraft, special mobile equipment, and implements of husbandry are specifically subject to the fee.

I hope this information is helpful. The Department of Revenue maintains a Web site which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Melanie A. Jarvis
Associate Counsel

MAJ:msk
Enc.